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costs associated with the construction of a wideband PCS system in the MTA or the costs associated with constructing nationwide or regional narrowband PCS systems.¹ The record also establishes that many existing SMR systems operate with revenues of less than \$3 million.² These relatively low costs combined with the existing presence in the SMR industry of numerous companies with limited revenues counsels against raising the standard for "small businesses" to give bidding credits to much more heavily capitalized entities.

While it is difficult to predict the price that each MTA block will bring at auction, assuming some general correlation between cost and the "MHz-pop" available, the value and cost of ten-channel 900 MHz SMR systems should be well below the value of broadband PCS MTA blocks or narrowband regional or nationwide blocks. In this regard, correlation between the amount of spectrum subject to bid and the gross revenue cap to be employed for auctions is suggested in the comments filed by the "Small Common Carrier Coalition" ("SCCC"), at 7. RMD agrees with SCCC's logic, but not its math.

Contrary to SCCC's assertion, the amount of 900 SMR spectrum available for auction (not even taking into account the presence of existing systems) is only 5 MHz in total and only 250 kHz per ten-channel block, as compared with 30 MHz for broadband PCS. Applying SCCC's *pro rata* proposal, the small business revenue cap should be less than one percent of that applied for broadband PCS, less than one-half of \$1 million, not \$13.5 million as proposed.

It should be understood, moreover, that, proposals to clear the way for new entrants reflect little concern for the fact that existing systems include those operated

¹ See Comments of Motorola at 6-7; CelSMER at 4-5. Although CelSMER contends that the costs of wide area 900 MHz SMR construction and operation justify a larger bidding credit for small businesses, this appears to be inconsistent with the very fact that, without bidding credits or other special rules, it has been able to acquire and construct an extensive wide area network. Moreover, while CelSMER bases its cost estimates on having ten channels per location, there is no requirement that all ten channels of a system be constructed at each site; accordingly, its cost estimate, while exponentially lower than PCS construction, still appears to be unnecessarily high.

² See Motorola Comments at 7; American Mobile Telecommunications Association ("AMTA") Letter, filed March 23, 1995, at 2-3. The assertion by the National Telephone Cooperative Association ("NTCA") Comments at 9) that a business with gross revenues of \$3 million cannot raise the capital necessary to build a ten-channel SMR system is, therefore, erroneous.

by small businesses who fear they will be overrun by the auction process.³ While RMD does not agree with the proposals of ProTec and CelSMer to carve out special credits for systems operators that fit their particular profile, while ignoring the investments of existing systems who fall outside of their proposed categories,⁴ the point remains that the auction process puts all those who have already invested in wide-area networks at risk of falling prey to speculative bidders.⁵ Accordingly, as urged by RMD, Geotek, AMTA and others,⁶ bidding credits should not be permitted to new entrants on incumbent blocks. Further, to the extent such credits are permitted, they should be kept to a minimum, because the higher the credit applicable to frequencies that existing systems require for expansion, the greater will be the incentive to take advantage of bidding rules for improper purposes.

II. THE RULES DO NOT REQUIRE MODIFICATIONS FURTHER TO ACCOMMODATE RURAL TELEPHONE OR WOMEN AND MINORITIES WHO DO NOT FALL WITHIN THE PROPOSED DEFINITION OF SMALL BUSINESS.

A. RURAL TELEPHONE INTERESTS ARE ADEQUATELY PROTECTED BY THE PARTITIONING RULES.

The Commission already has determined on numerous occasions that rural telephone companies are not disadvantaged, do not face special barriers to entry, and should not be granted special bidding credits or other financial benefits to participate

³ See Comments of CelSMer and ProTec.

⁴ The logic of how these companies propose credits for some, but not others, appears contorted. CelSMer wants higher bidding credits for small businesses than given in any other auction proceedings which it says are necessary because of the costs of system construction, but no enhancements for women or minorities because 900 MHz SMR does not have the same cost constraints as involved in PCS. CelSMer Comments at 3 and 5. ProTec makes a very good case why those that have made investments in existing wide area systems should not have to go through an auction for an MTA license for the same frequencies (at 3-4), but then proposes fall back "alternatives" that give designated entities who are also incumbents (a category which ProTec fits) huge credits (40%) that they could use to "outbid" other incumbent systems on the frequencies in which they operate (at 4-5).

⁵ CelSMer makes the curious assertion that even though 900 MHz SMR frequencies might otherwise bring little at auction, the presence of existing systems desperately needing frequencies to expand operation on frequencies in which they have already invested so much may make the MTAs more costly than anticipated. CelSMer Comments at 2-3. But this should only be true if the auction rules encourage third parties, with no interest in building their own systems and therefore not concerned with their intrinsic value, to bid for the frequencies, with the help of bidding credits, and with the goal of ultimately getting a higher price from an existing system which may have no choice but to pay at an exorbitant rate or lose the efficacy of its entire network.

⁶ See Geotek Comments at 4-5; AMTA Comments at 6-7.

in Commission auctions.⁷ It follows from this that the definition of small businesses and the credits available to them should not be artificially inflated to accommodate these larger revenue telephone entities, particularly in light of the evidence that they are, in fact, better financially situated than many incumbent SMR entities against whom they may bid.

Indeed, the theory of encouraging rural telephone participation and allowing them partitioning rights is that they are supposedly better situated to implement service to rural areas. But, if this is the case, such companies do not need further financial incentives to bid against those who may not already have a presence in rural areas and may find it more expensive to establish one.

B. BROAD BRUSHED ASSERTIONS ABOUT MINORITY OR GENDER POLICIES DO NOT ESTABLISH A BASIS FOR LARGE CREDITS THAT COULD BE USED TO "OUTBID" EXISTING 900 MHZ SMR OPERATORS. THE CREDITS AVAILABLE TO SMALL BUSINESSES SHOULD BE SUFFICIENT FOR NEW SYSTEM CONSTRUCTION AND WOULD BE AVAILABLE TO MOST MINORITY AND WOMEN-OWNED ENTERPRISES.

By and large, those commenting parties who favor additional credits for minority or women applicants fail to address the special characteristics of the SMR industry, the lower costs (and therefore lower barriers to entry) that exist, the special problems of establishing high credits for new entrants (much less an "entrepreneur's block") on frequencies already occupied by existing systems, or the fact that the previous licensing of these systems by Commission lottery did not discriminate by race or gender and, in fact, led to a number of licenses being awarded to women and minorities.⁸

These pleadings, while ostensibly about SMR, seem largely to address matters related to mass media and industries other than the communications industry.⁹

⁷ See Fifth Report and Order in PP Docket No. 93-253, 9 FCC Rcd. 5532 (1994) at 5599 and Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking in PP Docket No. 93-253, 10 FCC Rcd. 175 (1994) at 191 and 202.

⁸ ProTec's Comments are more specific to the SMR industry. However, as previously noted, while making a good case why those who have made large investments in SMR systems should not have their ability to expand in MTAs that they have already substantially covered subject to auction, ProTec does not explain why this concern for incumbent systems should be limited to those owned by women or minorities.

⁹ See Comments of the Minority Business Enterprise Legal Defense and Education Fund ("MBELDF") and the National Association of Black Owned Broadcasters ("NABOB"). The (footnote continued on next page)

Indeed, unless the Commission adopts the a priori view that separate and enhanced bidding credits for minorities and women must be adopted in every auction proceeding (even when proposed credits for small businesses would encompass most minority or women-owned enterprises), they offer no arguments of relevance to this proceeding.

NABOB's assertion that the Commission's proposal is "specious" because most small businesses are not minority-owned misses the point, as obviously the Commission's approach would also make credits available to proposed start-up ventures (minorities or not) that do not yet have even a small business base. NABOB Comments at 7. Indeed, by limiting the small business credit to relatively small business concerns, the Commission is gearing it to what NABOB describes as the "very limited business base from which minorities start the process." Id. Raising the eligibility level to businesses with much higher revenues, as proposed by NABOB, would defeat this purpose.

RMD urges that the plain language of the statute does not impose on the Commission an a priori mandate to have separate bidding credits for women and minorities in all auction proceedings. The very fact that the statute tells the Commission to "consider" a variety of procedures, one of which is bidding credits, makes clear that such bidding credits are not required.¹⁰ Further, in light of the history of previous SMR licensing, limited entry costs, and the availability of a non-racially or gender specific, but still effective, means of giving bidding credits to small businesses, including (but not limited to) minority or female-controlled entities, RMD urges that the Commission's proposal is more than sufficient.

RMD further urges that even if the Commission were to consider any racially-based or gender-specific credit that such credit not be permitted to be used to raise the overall bidding credit that could be employed *vis-a-vis* incumbent frequency blocks, but be limited to unencumbered spectrum, where such credits

Comments of the National Paging and Personal Communications Fund seem even more distant from the issues at hand. Whether or not its proposed legislation for a fund for minority communications enterprises is a good idea (and whether or not it should be funded from interest or auction deposits as opposed to more directly from general revenues), the fact is that this is well beyond the powers of the Commission to grant or the scope of the instant proceeding.

¹⁰ 47 USC § 399 j(4)(D).

would be more likely to benefit the establishment of new communications services by the economically disadvantaged and not merely to encourage greenmail.

Finally, RMD notes that earlier today the Supreme Court issued its decision in Adarand v. Peña, 1995 W.L. 347345 (U.S. June 12, 1995), deciding (among other things) to apply a test of strict scrutiny to racial classifications by the Federal Government. RMD urges that this decision should further sway the Commission against employing racial or gender classifications where as here preferences based upon non-racial or gender factors are available to serve the identified federal interest of promoting diversity of ownership in communications facilities.

III. THE NEED TO CONSULT WITH THE SMALL BUSINESS ADMINISTRATION ("SBA") SHOULD NOT BE ALLOWED TO DELAY IMPLEMENTATION OF THE 900 MHZ SMR AUCTIONS.

RMD understands that the Commission may need to consult with the SBA regarding the definition of small businesses to be used for the 900 MHz SMR auctions. Given the comments submitted in this proceeding by the Chief Counsel for Advocacy of that agency, RMD is concerned both with the substance and timing that this consultation will entail.¹¹

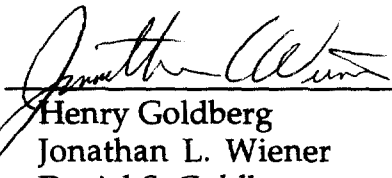
The licensing of 900 MHz SMR has been delayed almost for a decade while different licensing approaches have been debated. While the opportunity for participation of small businesses (minority or otherwise) is of course a legitimate concern, as have been other issues that have previously delayed licensing in this band, RMD urges that this not be allowed to delay the licensing process yet again. With cellular, 800 MHz SMR and now PCS all already substantially licensed

¹¹ Apparently based upon the much more contentious debate involving the more valuable 800 MHz band, the SBA urges the Commission to disregard the evidence and opinion submitted by AMTA as not representing the entire SMR industry and surmises that the comments in this proceeding will demonstrate that AMTA's position is not supported by small SMR providers. See SBA Comments at 10. While AMTA of course can defend itself, the record in the proceeding in fact shows uniform support from the SMR industry for the definition of small businesses proposed by AMTA.

nationwide, a further delay may mean that no 900 MHz SMR business, large or small, will be able effectively to compete.

Respectfully submitted,

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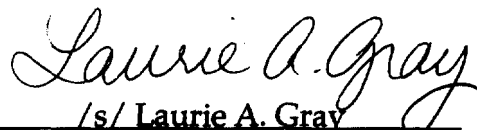
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